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ABSTRACT

This guide presents an overview of collective bargaining in public employment in the State of Hawaii. Section 89-2 of the Hawaii Public Employee Collective Bargaining Law Partially defines collective bargaining as the "performance of the mutual obligations of the public employer and the exclusive representative at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to wages, hours, and other terms and conditions of employment...." The background developments, an analysis of the Hawaii Public Employee Collective Bargaining Law, questions and answers, the statutes, and definitions and terms are the main topics of this guide. (Author/DW)

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A GUIDE TO HAWAII PUBLIC EMPLOYEE COLLECTIVE BARGAINING

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Dear Public Employee:

In 1970 the Fifth State Legislature passed a bill on collective bargaining in public employment. Governor John A. Burns signed the bill into law. With this the State of Hawaii has opened a new dimension in labor relations for its employees.

To be effective, collective bargaining in public employment law must be understood by all of us who are in the public service. To this end, I asked the Center for Governmental Development to undertake the publication of A Guide to Hawaii Public Employee Collective Bargaining. The guide will include an objective review and analysis of the law and the answers to questions commonly asked.

We hope that you will find this publication to be helpful.

Very truly yours,

James H. Takushi

JAMES H. TAKUSHI
Director of Personnel Services

MEMBER
Public Personnel Association
Since 1940

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INTRODUCTION

Collective bargaining is the process of negotiating terms and conditions of employment in good faith between employers and employee organizations. It is a bilateral procedure designed to compose differences between workers and their employers. The results of bargaining negotiations are generally reduced to writing in the form of a collective bargaining agreement.

Section 89-2 of the Hawaii Public Employee Collective Bargaining law defines collective bargaining as:

> performance of the mutual obligations of the public employer and the exclusive representative at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to wages, hours, and other terms and conditions of employment . . .

The purpose of this Guide is to provide an overview presentation and general understanding of collective bargaining in public employment in the State of Hawaii.

Paul P. Tinning
July 1971

Background Developments

EMPLOYEE-MANAGEMENT COOPERATION

The 1967 Hawaii Legislature passed Acts 50 and 287 relating to employee-management cooperation in the state and county service. Act 287 was approved by the Governor on June 8, 1967, and became effective as of the date of its approval. It amended Section 3 of the Revised Laws of Hawaii. The Act granted the right of employees to join or not to join, the right to petition, procedures for consultation including requests for meetings, visitations and setting up of written records of meetings by mutual consent. The right to join public employees' associations was limited to unions not asserting the right to strike or proposing to assist in any strike against the government.

HAWAII CONSTITUTION

Section 1 of Article XII of the Hawaii State Constitution written in 1950 provided that:

> Persons in private employment shall have the right to organize for the purpose of collective bargaining.

Section 2, Article XII, dealing with public employees provided that:

> Persons in *public* employment shall have the right to organize and to present and make known their grievances and proposals to the State, or any political subdivision or any department or agency thereof. (Emphasis provided)

CONSTITUTIONAL AMENDMENT

This second section was amended by the State Constitutional Convention held in 1968. It was adopted by the people at the November 1968 elections. The amended section reads as follows:

> Persons in public employment shall have the right to organize for the purpose of collective bargaining as prescribed by law.

PUBLIC EMPLOYEE BARGAINING BILLS

The phrase "as prescribed by law" contained in the 1968 constitutional amendment was a mandate to the Legislature to implement collective bargaining for public employees. Acting under this mandate, the Legislature studied and reviewed numerous public employee bargaining bills during its 1969 and 1970 sessions. Senate Bill 1696-70, as amended, was enacted by the 1970 Hawaii Legislature to effectuate constitutional purpose.

Analysis of Hawaii Public Employee Collective Bargaining Law

PURPOSE

The law was enacted to implement the constitutional mandate of Article XII section 2, which grants public employees the right to organize for the purpose of collective bargaining as prescribed by law.

STATEMENT OF FINDINGS AND POLICY

The declared public policy of the State is to:

(1) Promote *joint*-decision making and more responsive and effective government; and

(2) Promote harmonious and cooperative employer-employee relations through collective bargaining while, at the same time, maintaining the principles of the merit system and equal pay for equal work.

Section 89-1, Hawaii Revised Statutes, reads in part as follows:

> The legislature finds that joint-decision making is the modern way of administering government. Where public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their condition of work, to provide a rational method for dealing with disputes and work stoppages, and to maintain a favorable political and social environment.

PUBLIC EMPLOYER

The Governor (State); the Mayors (Counties); the Board of Education (Department of Education); the Board of Regents (University of Hawaii) or any agents thereof constitute a public employer.

Section 89-2 (9) reads as follows:

> "Employer" or "public employer" means the governor in the case of the State, the respective mayors in the case of the city and county of Honolulu and the counties of Hawaii, Maui, and Kauai, the board of education in the case of the department of education, and board of regents in the case of the University of Hawaii, and any individual who represents one of these employers or acts in their interest in dealing with public employees.

PUBLIC EMPLOYEE COVERAGE

Any person employed by a public employer, including supervisors.

PUBLIC EMPLOYEE EXCLUSIONS

Section 89-6 (c) specifically excludes from coverage of the law any:

> Elected or appointed official, member of any board or commission, representative of a public employer; including the administrative officer, director, or chief of a state or county department or agency, or any major division thereof as well as his deputy, first assistant, and any other top-level managerial and administrative personnel, individual concerned with confidential matters affecting employee-employer relations, part time employee working less than twenty hours per week, temporary employee of three months' duration or less, or any commissioned and enlisted personnel of the Hawaii national guard . . .

PUBLIC EMPLOYEE RIGHTS

The law grants public employees the right to: form and join employee organizations; bargain collectively on wages, hours, and other terms and conditions of employment; strike and refrain from any or all of such activities.

Employee rights are set forth in Section 89-3 which reads:

> Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activites for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except to the extent of making such payment of service fees to an exclusive representative.

Section 89-8 (b) also provides that:

> An individual employee may present a grievance at any time to his employer and have the grievance heard without intervention of an employee organization; provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement then in effect between the employer and the exclusive representative.

PUBLIC EMPLOYER RIGHTS

The law states that collective bargaining shall not interfere with the rights of a public employer to direct, hire, assign, discipline, transfer, and layoff employees, to determine employee qualifications and the methods to conduct agency operations.

These management rights are contained in Section 89-9 (d) and are as follows:

> (1) direct employees; (2) determine qualifications, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer's operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies.

PUBLIC EMPLOYMENT RELATIONS BOARD

The law creates a Public Employment Relations Board composed of three members appointed by the Governor. One management representative, one labor representative, and one public representative who shall serve as chairman shall constitute the board. (Act 49 passed by the 1971 Legislature and signed by the Governor changed the composition of the Board from five to three members).

Principal Duties of the Board include:

(1) Establishing procedures and resolving disputes over:
   (a) designation of an appropriate bargaining unit;
   (b) conduct of representation elections;
   (c) collective bargaining issues, including "cost" items;
   (d) grievances; and
   (e) prohibited practices.

(2) Setting requirements to eliminate imminent or present danger caused by an actual or potential strike.

Some of the other duties include:

(1) Establishing panels and determining rates of mediators, fact finders and arbitrators;

(2) Conducting studies on public employer-employee problems, and other related studies on collective bargaining.

APPROPRIATE BARGAINING UNITS

Section 89-6 of the law *mandates* thirteen (13) *statewide* employee units appropriate for collective bargaining. They are as follows:

(1) Blue collar;
(2) Blue collar Supervisors;
(3) White collar;
(4) White collar Supervisors;
(5) Teachers and other personnel under the same salary schedule (DOE);
(6) Educational officers and other personnel under the same salary schedule (DOE);
(7) University and community college Faculty;
(8) University and community college Personnel;
(9) Registered professional nurses;
(10) Hospital and institutional workers (non-professionals);
(11) Firemen;
(12) Policemen;
(13) Professional and scientific employees, other than registered nurses.

Units 9 through 13 (nurses, hospitals and institutional workers; firemen, policemen and professional-scientific) are, because of their specialized nature of work and training and the essentiality of certain occupations, designated as *optional* bargaining units. Employees in these units have the option to:

> . . . either vote for separate units or for inclusion in their respective units (1) through (4). If a majority of the employees in any optional unit desire to constitute a separate appropriate bargaining unit, supervisory employees may be included in the unit by mutal agreement among supervisory and non-supervisory employees within the unit; if supervisory employees are excluded, the appropriate bargaining unit for such supervisory employee shall be (2) or (4), as the case may be.

Compensation plans and salary schedules are the principal criteria used to differentiate blue collar from white collar employees, supervisory from non-supervisory employees, faculty from non-faculty, teachers from educational officers, and professional from non-professional employees.

The law further requires that:

> In differentiating supervisory from non-supervisory employees, class titles alone shall not be the basis for determination, but, in addition, the nature of the work, including whether or not a major portion of the working time of a supervisory employee is spent as part of a crew or team with non-supervisory employees, shall also be considered.

EXCLUSIVE REPRESENTATION OF EMPLOYEE ORGANIZATION

The law grants *exclusive* recognition rights to an employee organization which represents a majority of the employees in an appropriate bargaining unit.

ELECTION AND CERTIFICATION

The Public Employment Relations Board is authorized to conduct secret ballot elections to determine which employee organization; if any, the employees want to represent them for purposes of collective bargaining. If a majority of employees in an appropriate bargaining unit cast their ballots in favor of a particular employee organization to represent them that organization will be certified by the Board as the exclusive bargaining agent for all of the employees in the unit.

ELECTION REQUIREMENTS

In seeking a representation election in order to obtain Board certification, an employee organization must

submit to the Board *written proof* by at least thirty percent (30%) of the employees in an appropriate unit. Having satisfied that requirement, the Board will proceed to conduct a secret ballot election to determine whether a majority of such employees vote for representation by that employee organization or for no representation.

An *intervening* employee organization is entitled to appear on the election ballot provided it petitions the Board and submits *written proof* that at least ten percent (10%) of the employees want that organization to represent them.

Section 89-7 states that no election shall be directed by the Board in any appropriate bargaining unit where:

> (1) a valid election has been held in the preceding twelve months; or (2) a valid collective bargaining agreement is in force and effect, except upon a petition as provided herein not more than ninety days, but not less than sixty days, prior to the expiration of the agreement.

RUNOFF ELECTION

In any representation election where none of the choices on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two (2) choices which received the largest number of valid votes cast in the election.

RIGHTS OF EXCLUSIVE REPRESENTATIVE

An employee organization that wins a representation election and is certified by the Board as the exclusive bargaining agent "shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership."

The law also permits an exclusive bargaining representative to charge non-members a reasonable "service fee" to defray the costs of bargaining and administration of the agreement. Such service fee is to be computed "on a pro rata basis among all employees" in the unit.

Other employee payroll deductions such as membership dues, initiation fees, insurance premiums and other benefits may be continued, irrespective of exclusive bargaining representation, provided the employee furnishes written authorization to the employer.

COLLECTIVE BARGAINING AND SCOPE OF NEGOTIATIONS

The law *mandates* that public employers and exclusive employee organizations bargain and negotiate in good faith with respect to wages, hours and other terms and conditions of employment.

For the purpose of bargaining, the employer shall be the Governor or his agents of not less than three (3) together with no more than two (2) members of the Board of Education; the Governor or his agents of not less than three (3) together with no more than two (2) members of the Board of Regents; and the Governor or his agents together with the mayors of all the counties or their agents.

BARGAINING LIMITATIONS AND EXCLUSIONS

Section 89-9(c) of the law *permits* "consultation" on all matters affecting employee relations, including existing regulations or any potential regulation which may be promulgated by the employer.

Section 89-9(d) *excludes* from the scope of bargaining such subjects as:

> classification and reclassification, retirement benefits and the salary ranges and the number of incremental and longevity steps now provided by law.

However, the law *mandates* bargaining on the "amount of wages to be paid in each range and step and length of service necessary for the incremental and longevity steps."

Collective bargaining, moreover, shall not be inconsistent with the principles of the merit system or equal pay for equal work.

Bargaining agreements also must not interfere with the rights of the employer to direct, hire, assign, demote, promote, discipline, transfer and layoff employees and to determine employee qualifications and the methods to conduct agency operations.

BARGAINING PROCEDURE

The party initiating bargaining negotiations is required to notify the other party, by certified mail and in writing, of meeting arrangements and bargaining areas under consideration.

The law urges that the parties conclude all aspects of the bargaining process in order that the respective legislative bodies have sufficient time to act on the employer's budget.

The law requires that all *cost* items are subject to appropriations by the respective legislative bodies. Within ten (10) days after employee ratification of the agreement, the employer must submit all cost items for legislative approval.

If the State legislature is not in session at the time, the cost items shall be included in the next budget of the Governor.

Cost items may be approved or rejected by the respective legislative bodies. If rejected, the cost items are then referred to the parties for continued bargaining.

PROHIBITED (UNFAIR) PRACTICES

As a general rule, prohibited practices are statutory restraints placed on employers, employees, and unions prohibiting them from certain courses of conduct. They were designed to protect the employee, the employer, and the union.

Charges or complaints of violations of these statutory restraints must be filed with the Public Employment Relations Board.

EMPLOYER PROHIBITED PRACTICES

Section 89-13(a) prohibits willful conduct on the part of public employers to:

> (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

(2) Dominate, interfere, or assist, in the formation, existence, or administration of any employee organization;
(3) Discriminate in regard to hiring, tenure, or any terms of condition or employment to encourage or discourage membership in any employee organization;
(4) Discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because he has informed, joined or chosen to be represented by any employee organization;
(5) Refuse to bargain collectively in good faith with the exclusive representative . . .;
(6) Refuse to participate in good faith in the mediation, fact finding, and arbitration procedures . . .;
(7) Refuse or fail to comply with any provisions of this chapter, or
(8) Violate the terms of a collective bargaining agreement.

EMPLOYEE-EMPLOYEE ORGANIZATION PROHIBITED PRACTICES

Section 89-13(b) prohibits willful conduct on the part of a public employee or an employee organization to:

(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
(2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative . . .;
(3) Refuse to participate in good faith in the mediation, fact finding and arbitration procedures . . .;
(4) Refuse or fail to comply with any provision of this chapter; or
(5) Violate the terms of a collective bargaining agreement.

SETTLEMENT OF GRIEVANCE DISPUTES

A grievance dispute is any complaint that affects the employment relationship and usually involves the interpretation, application or violation of a collective bargaining agreement. The grievance procedure is the mechanism by which such complaints are processed in an orderly fashion without resort to work stoppages. Such procedure is usually spelled out in the contractual language of the agreement and is viewed as the heart of collective bargaining.

Section 89-11(a) *encourages* the parties to develop grievance procedures in their bargaining agreements, including final and binding arbitration.

SETTLEMENT OF COLLECTIVE BARGAINING DISPUTES

Collective bargaining disputes involve conflict situations between management and labor over the terms to be contained in the collective bargaining agreement. Wages, hours, and other terms and conditions of employment represent the major areas of conflict.

Section 89-11(b) *encourages* the parties to negotiate dispute procedures in their agreements, including final and binding arbitration, to resolve bargaining disputes.

In the event the parties do *not* include such dispute provisions in their agreements, the law requires that the Board, at the request of either party or on its own motion, provide assistance as follows:

	Time Duration (Days)
(1) MEDIATION. Appointment by the Board of mediator(s) within three (3) days after confirmation of the dispute; [If the dispute continues fifteen (15) days after date of inception]	15
(2) FACT FINDING. Appointment by the Board of not more than three (3) fact finders within three (3) days after the mediation period; the fact finders shall render findings to the parties within ten (10) days after their appointment. If the dispute remains unresolved five (5) days after their findings, the Board shall make public the findings and recommendations;	10 + 5 15 (Total = 30)
(3) ARBITRATION. The disputants *may*, if the dispute remains unresolved after thirty (30) days from date of impasse, *mutually* agree to submit it to arbitration for a final and binding decision. The three (3) member arbitration panel has twenty (20) days in which to render a decision.	+20 (Total = 50)

Any increased cost items resulting from the arbitration award are subject to legislative approval. The employer must submit such items to the legislative body within ten (10) days from the date of the award.

Should the parties reject final and binding arbitration as a method of settling their bargaining dispute, they are then free to take whatever legal action necessary to settle their differences. *No* disruption in public services may occur, however, until at least sixty (60) days after the issuance of the fact finding report to the public. Since the mediation and fact finding procedures consume at least fifteen (15) days respectively for a total of thirty (30) days, and the "cooling-off" period requires sixty (60) days, there would be a ninety (90) day period during which the disputants could not legally strike or lockout.

The law further requires that the employer submit his recommendations for settlement of the dispute on all cost items to the legislative body, together with the fact finding panel's recommendations. And the exclusive representative may submit its recommendations for settlement of the disputed cost items to the legislative body.

Mediation and fact finding expenses are borne by the Board; the costs of the neutral arbitrator are shared equally by the disputants.

STRIKE RIGHTS AND PROHIBITIONS

It is *lawful* for public employees, except those not included in an appropriate bargaining unit certified by the Board as an exclusive representative and those involved in a dispute referred to arbitration, *to strike* after exhaustion of mediation, fact finding, arbitration, and prevention of prohibited practices proceedings. If arbitration is rejected, the sixty (60) day "cooling-off" period must be observed. In addition, the exclusive representative is required to file a ten (10) day notice of intent to strike with the Board and the employer.

Any threatened or actual strike which endangers the *public health* or *safety* may be investigated by the Board upon petition by the employer. Should the Board's investigation find an *imminent* or *present danger* to the health and safety of the public, it "shall set requirements that must be complied with to avoid or remove any such imminent or present danger."

FINANCIAL REPORTS TO EMPLOYEES

Section 89-15 requires that employee organizations make available to the employees each year a detailed financial statement, certified by a public accountant, of its financial transactions.

LIST OF EMPLOYEE ORGANIZATIONS

Section 89-17 requires that the Board maintain a list of employee organizations and other pertinent information, including a breakdown of those organizations which have been certified as exclusive representatives.

PRIORITY OF THE LAW

Section 89-19 states that the law shall take precedence over all "conflicting statutes concerning this subject matter and shall preempt all contrary ordinances executives orders, legislation, rules, or regulations adopted by the departments of personnel services or the civil service commission."

Questions and Answers

THE COLLECTIVE BARGAINING LAW

What is the bargaining law?

The Hawaii Public Employee Collective Bargaining law is legislation which governs relations between public employers and public employees. The law covers all employees, with the exception of certain statutory exclusions, working for state and local government.

What is the State Public Employment Relations Board?

The State Public Employment Relations Board (PERB) is a three-member board established under Section 89-5 of the law. It resolves disputes concerning the representation status of employee organizations and assists in resolving disputes that may arise in the course of negotiations between public employers and employee organizations. It has enforcement power to assure fairness in public employer-employee relations.

What rights are granted to public employees?

Public employees are granted the right to join, or refrain from joining, employee organizations of their own choice for the purpose of negotiating wages, hours, and other terms and conditions of employment with their employer.

What are prohibited practices?

Prohibited practices involve conduct on the part of employers or employee organizations which interferes with the rights of public employees.

Does the law establish prohibited practices by public employers and by employee organizations?

Yes. The law prohibits public employers and employee organizations from interfering with the rights of public employees to participate or refrain from participating in employee organizations of their own choosing. It also prohibits public employers from interfering with the formation or administration of employee organizations and discriminating against employees for the purpose of encouraging or discouraging participation in the activities of an employee organization. Also, both public employers and employee organizations are required to bargain collectively in good faith.

How are violations and the prohibited practices section policed?

PERB is granted exclusive authority to prevent prohibited practices.

COLLECTIVE BARGAINING

What is collective bargaining?

Collective bargaining involves joint determination of public employees' wages, hours and other conditions of employment by public employers and employee organizations.

How are negotiations conducted?

The technique of bargaining and the skill of negotiation must, like other skills, be learned by practice.

Who may represent the public employer and public employee organizations in collective negotiations?

Either party may be represented by whomever it chooses unless there would be an inherent conflict of interest. Such a conflict could arise, for example, where an employee within the negotiating unit acts as a negotiator for the employer.

Are public employers required to enter into collective bargaining?

Yes. Public employers are *required* to negotiate with certified employee organizations. Moreover, the public employer is required to enter into a written agreement with that employee organization.

What is a bargaining agreement?

A collective bargaining agreement is the result of the exchange of mutual promises between a public employer and an employee organization which becomes a binding contract. The agreement is enforceable, except that any cost items which require approval by a legislative body become binding only when the appropriate legislative body approves them.

REPRESENTATION RIGHTS

What is a bargaining unit?

The law designates 13 statewide units of employees appropriate for collective bargaining.

What is an exclusive employee organization?

The principle of exclusivity means that an employee organization which has been granted *exclusive* recognition has the right to be the sole representative of all of the employees in an appropriate bargaining unit whether or not the particular employee wishes the organization. An exclusive employee organization has the duty to represent each employee fairly, whether or not he is a member.

How does an employee organization achieve exclusive representation status?

An employee organization may be certified as the exclusive bargaining representative by:

(1) Filing a petition for a representation election with PERB, accompanied by written proof that 30% ("showing of interest") of the employees in the unit want that organization to represent them; and then

(2) Winning a majority of valid votes cast by eligible employees in the unit in a secret ballot election conducted by PERB.

Satisfying these requirements, PERB will certify the employee organization as the exclusive representative.

What rights does a certified exclusive employee organization receive?

An employee organization certified as exclusive representative is guaranteed: (1) the right of representing employees in collective bargaining negotiations and the settlement of grievances; (2) the right to charge nonmembers a service fee; and (3) the right to unchallenged representation status for 12 months.

What is a "service fee"?

An exclusive employee organization may charge nonmembers a reasonable service fee to defray the costs of bargaining and administration of the agreement. The fee must be computed on a pro rata basis among all employees in the unit.

What other employee payroll deductions may be authorized?

Membership dues, initiation fees, insurance premiums and other benefits may be continued provided the employee furnishes written authorization to the employer.

GRIEVANCE AND IMPASSE PROCEDURES

Does the law authorize final and binding arbitration of grievance disputes?

Yes. The law *encourages* the parties to negotiate grievance dispute procedures in their agreements, including arbitration.

Does the law authorize final and binding arbitration of collective bargaining (impasse) disputes?

Yes. The law *encourages* the parties to negotiate bargaining dispute procedures in their agreements, including arbitration.

What role does PERB play in settling bargaining disputes?

PERB will, when notified of a dispute by either party or on its own motion, appoint a mediator or mediators to settle the dispute. Should mediation prove unsuccessful, PERB will then appoint a panel of 3 fact finders to make recommendations for the settlement of the dispute.

What is mediation?

Mediation is a *voluntary* process designed to render assistance to the bargaining disputants in an effort to get them to resolve their differences. The mediator is not authorized to make final and binding decisions or recommendations.

What is fact finding?

Fact finding is an *involuntary* procedure designed to gather the facts involved in the dispute. The fact finders are authorized to make recommendations for the settlement of the dispute. The recommendations are *not* final and binding on the disputants, but they can be made public in an effort to influence public opinion in settling the dispute.

What is arbitration?

Arbitration is a *voluntary* procedure whereby the parties may *mutually* agree to submit either their grievance or bargaining differences to an arbitration panel for settlement. The arbitration decision or award is final and binding on the disputants.

Does PERB charge a fee for its mediation, fact finding or arbitration services?

Mediation and fact finding costs are assumed by PERB. However, the costs of the neutral arbitrator are shared equally by the parties to the dispute.

Are public employee strikes legal?

Yes. The law grants public employees the legal right to strike, provided the employees and the exclusive employee organization satisfy certain requirements contained in the law.

Strikes which pose or cause an *imminent* or *present* danger to the public *health* or *safety* can be investigated by PERB, upon petition by the employer, for the purpose of eliminating such danger to the public.

What is the priority of the law in relation to other conflicting statutes or regulations?

The law takes *precedence* over all conflicting statutes on this subject matter and *preempts* all contrary local ordinances, executive orders, legislation, rules or regulations of the State, county or any department or agency, including the department of personnel services or the civil service commission.

BEST COPY AVAILABLE

The Law

[CHAPTER 89]
COLLECTIVE BARGAINING IN PUBLIC EMPLOYMENT

SECTION

[89-1] Statement of Findings and Policy
[89-2] Definitions
[89-3] Rights of Employees
[89-4] Payroll Deductions
[89-5] Hawaii Public Employment Relations Board
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[§89-1] Statement of findings and policy. The legislature finds that joint-decision making is the modern way of administering government. Where public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, and to maintain a favorable political and social environment.

The legislature declares that it is the public policy of the State to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are best effectuated by (1) recognizing the right of public employees to organize for the purpose of collective bargaining, (2) requiring the public employers to negotiate with and enter into written agreements with exclusive representatives on matters of wages, hours, and other terms and conditions of employment, while, at the same time, (3) maintaining merit principles and the principle of equal pay for equal work among state and county employees pursuant to sections 76-1, 76-2, 77-31, and 77-33, and (4) creating a public employment relations board to administer the provisions of this chapter. [L 1970, c 171, pt of §2]

[§89-2] Definitions. As used in this chapter:

(1) "Arbitration" means the procedure whereby parties involved in an impasse mutually agree to submit their differences to a third party for a final and binding decision.

(2) "Appropriate bargaining unit" means the unit designated to be appropriate for the purpose of collective bargaining pursuant to Section 89-6.

(3) "Board" means the Hawaii public employment relations board created pursuant to section 89-5.

(4) "Certification" means official recognition by the Hawaii public employment relations board that the employee organization is, and shall remain, the exclusive representative for all of the employees in an appropriate bargaining unit for the purpose of collective bargaining, until it is replaced by another employee organization, decertified, or dissolves.

(5) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to wages, hours, and other terms and conditions of employment, except that by any such obligation neither party shall be compelled to agree to a proposal, or be required to make a concession.

(6) "Cost items" includes wages, hours, and other terms and conditions of employment, the implementation of which requires an appropriation by a legislative body.

(7) "Employee" or "public employee" means any person employed by a public employer except elected and appointed officials and such other employees as may be excluded from coverage in section 89-6(c).

(8) "Employee organization" means any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment of public employees.

(9) "Employer" or "public employer" means the governor in the case of the State, the respective mayors in the case of the city and county of Honolulu and the counties of Hawaii, Maui, and Kauai, the board of education in the case of the department of education, and the board of regents in the case of the university of Hawaii, and any individual who represents one of these employers or acts in their interest in dealing with public employees.

(10) "Exclusive representative" means the employee organization, which as a result of certification by the board, has the right to be the collective bargaining agent of all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership.

(11) "Fact-finding" means identification of the major issues in a particular impasse, review of the positions of the parties and resolution of factual differences by one or more impartial fact-finders, and the making of recommendations for settlement of the impasse.

(12) "Impasse" means failure of a public employer and an exclusive representative to achieve agreement in the course of negotiations.

(13) "Legislative body" means the legislature in the case of the State, the city council in the case of the city and county of Honolulu, and the respective county councils in the case of the counties of Hawaii, Maui, and Kauai.

(14) "Mediation" means assistance by an impartial third party to reconcile an impasse between the public employer and the exclusive representative regarding wages, hours, and other terms and conditions of employment through interpretation, suggestion, and advice to resolve the impasse.

(15) "Professional employee" includes (A) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (B) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (A) (iv), and (ii) is performing related work under the supervision of a professional employee as defined in (A).

(16) "Service fee" means an assessment of all employees in an appropriate bargaining unit to defray the cost for services rendered by the exclusive representative in negotiations and contract administration.

(17) "Strike" means a public employee's refusal, in concerted action with others, to report for duty, or his wilful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment; provided, that nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to the conditions of employment.

(18) "Supervisory employee" means any individual having authority in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. [L 1970, c 171, pt of §2]

[§89-3] Rights of employees. Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except to the extent of making such payment of service fees to an exclusive representative as provided in section 89-4. [L 1970, c 171, pt of §2]

[§89-4] Payroll deductions. (a) The employer shall, upon receiving from an exclusive representative a written statement which specifies an amount of reasonable service fees necessary to defray the costs for its services rendered in negotiating and administering an agreement and computed on a pro rata basis among all employees within its appropriate bargaining unit, deduct from the payroll of every employee in the appropriate bargaining unit the amount of service fees and remit the amount to the exclusive representative. A deduction permitted

by this section, as determined by the board to be reasonable, shall extend to any employee organization chosen as the exclusive representative of an appropriate bargaining unit. If an employee organization is no longer the exclusive representative of the appropriate bargaining unit, the deduction shall terminate.

(b) In addition to any deduction made to the exclusive representative under subsection (a), the employer shall, upon written authorization by an employee, deduct from the payroll of the employee the amount of membership dues, initiation fees, group insurance premiums, and other association benefits and shall remit the amount to the employee organization designated by the employee.

(c) The employer shall continue all payroll assignments authorized by an employee prior to the effective date of this chapter and all assignments authorized under subsection (b) until notification is submitted by an employee to discontinue his assignments. [L 1970, c 171, pt of §2]

[§89-5] Hawaii public employment relations board. (a) There is created a Hawaii public employment relations board composed of three members of which (1) one member shall be representative of management, (2) one member shall be representative of labor, and (3) the third member, the chairman, shall be representative of the public. All members shall be appointed by the governor for terms of six years each, except that the terms of members first appointed shall be for four, five, and six years respectively as designated by the governor at the time of appointments. Public employers and employee organizations representing public employees may submit to the governor for consideration names of persons representing their interests to serve as members of the board and the governor shall first consider these persons in selecting the members of the board to represent management and labor. Each member shall hold office until his successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper administration of this chapter, it is declared to be in the public interest to continue board members in office as long as efficiency is demonstrated, notwithstanding the provision of section 26-34, which limits the appointment of a member of a board or commission to two terms. [as amended by Act 49, SLH, 1971]

The members shall devote full time to their duties as members of the board. The chairman of the board shall be paid a salary at the rate of ninety-five per cent of the salary of a circuit court judge. Each of the other members shall be paid a salary at a rate of ninety per cent of the chairman's salary. No member shall hold any other public office or be in the employment of the State or a county, or any department or agency thereof, or any employee organization during his term.

Any action taken by the board shall be by a simple majority of the members of the board. All decisions of the board shall be reduced to writing and shall state separately its finding of fact and conclusions. Three members of the board, consisting of the chairman, at least one member representative of management, and at least one member representative of labor, shall constitute a quorum. Any vacancy in the board, shall not impair the authority of the remaining members to exercise all the powers of the board. The governor may appoint an acting member of the board during the temporary absence from the State or the illness of any regular member. An acting member, during his term of service, shall have the same powers and duties as the regular member.

The chairman of the board shall be responsible for the administrative functions of the board. The board may appoint an executive officer, mediators, members of fact-finding boards, arbitrators, and hearing officers, and employ other assistants as it may deem necessary in the performance of its functions, prescribe their duties, and fix their compensation and provide for reimbursement of actual and necessary expenses incurred by them in the performance of their duties within the amounts made available by appropriations therefor.

The board shall be within the department of labor and industrial relations for budgetary and administrative purposes only. The members of the board and the employees of the board shall be exempt from chapters 76 and 77.

At the close of each fiscal year, the board shall make a written report to the governor of such facts as it may deem essential to describe its activities, including the cases and their dispositions, and the names, duties, and salaries of its officers and employees. Copies of the report shall be transmitted to the legislative bodies and to the public management committee.

(b) In addition to the powers and functions provided in other sections of this chapter, the board shall:

(1) Establish procedures for, investigate, and resolve, any dispute concerning the designation of an appropriate bargaining unit and the application of section 89-6 to specific employees and positions;
(2) Resolve any dispute concerning cost items;
(3) Establish procedures for, resolve disputes with respect to, and supervise the conduct of, elections for the determination of employee representation;
(4) Conduct proceedings on complaints of prohibited practices by employers, employees, and employee organizations and take such actions with respect thereto as it deems necessary and proper;
(5) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly its functions and powers, and for the purpose of such hearings and inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and the production of documents by the issuance of subpoenas, and delgate such powers to any member of the board or any person appointed by the board for

the performance of its functions;

(6) Establish, after reviewing nominations submitted by the public employers and employee organizations, lists of qualified persons, broadly representative of the public, to be available to serve as mediators, members of fact-finding boards, or arbitrators;

(7) Establish daily or hourly rates at which mediators, members of fact-finding boards, and arbitrators are to be compensated and apportion the costs of arbitration to the parties involved;

(8) Conduct studies on problems pertaining to public employee-management relations, and make recommendations with respect thereto to the legislative bodies; request information and data from state and county departments and agencies and employee organizations necessary to carry out its functions and responsibilities; make available to the public management committee, employee organizations, as may exist, mediators, members of fact-finding boards, arbitrators, and other concerned parties statistical data relating to wages, benefits, and employment practices in public and private employment to assist them in resolving issues in negotiations;

(9) Promulgate rules and regulations relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with chapter 91. [L 1970, c 171, pt of §2]

[§89-6] Appropriate bargaining units. (a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

(1) Nonsupervisory employees in blue collar positions;

(2) Supervisory employees in blue collar positions;

(3) Nonsupervisory employees in white collar positions;

(4) Supervisory employees in white collar positions;

(5) Teachers and other personnel of the department of education under the same salary schedule;

(6) Educational officers and other personnel of the department of education under the same salary schedule;

(7) Faculty of the University of Hawaii and the community college system;

(8) Personnel of the University of Hawaii and the community college system, other than faculty;

(9) Registered professional nurses;

(10) Nonprofessional hospital and institutional workers;

(11) Firemen;

(12) Policemen; and

(13) Professional and scientific employees, other than registered professional nurses.

Because of the nature of work involved and the essentiality of certain occupations which require specialized training, units (9) through (13) are designated as optional appropriate bargaining units. Employees in any of these optional units may either vote for separate units or for inclusion in their respective units (1) through (4). If a majority of the employees in any optional unit desire to constitute a separate appropriate bargaining unit, supervisory employees may be included in the unit by mutual agreement among supervisory and nonsupervisory employees within the unit; if supervisory employees are excluded, the appropriate bargaining unit for such supervisory employees shall be (2) or (4), as the case may be.

The compensation plans for blue collar positions pursuant to section 77-5 and for white collar positions pursuant to section 77-13, the salary schedules for teachers pursuant to section 297-33 and for educational officers pursuant to section 297-33.1, and the appointment and classification of faculty pursuant to sections 304-11 and 304-13, existing on [July 1, 1970], shall be the bases for differentiating blue collar from white collar employees, professional from nonprofessional employees, supervisory from nonsupervisory employees, teachers from educational officers, and faculty from nonfaculty. In differentiating supervisory from nonsupervisory employees, class titles alone shall not be the basis for determination, but, in addition, the nature of the work, including whether or not a major portion of the working time of a supervisory employee is spent as part of a crew or team with nonsupervisory employees, shall also be considered.

(b) For the purpose of negotiations, the public employer of an appropriate bargaining unit shall mean the governor or his designated representatives of not less than three together with not more than two members of the board of education in the case of units (5) and (6), the governor or his designated representatives of not less than three together with not more than two members of the board of regents of the university of Hawaii in the case of units (7) and (8), and the governor or his designated representatives together with the mayors of all the counties or their designated representatives in the case of the remaining units.

(c) No elected or appointed official, member of any board or commission, representative of a public employer, including the administrative officer, director, or chief of a state or county department or agency, or any major division thereof as well as his deputy, first assistant, and any other top-level managerial and administrative personnel, individual concerned with confidential matters affecting employee-employer relations, part time employee working less than twenty hours per week, temporary employee of three months duration or less, or any commissioned and enlisted personnel of the Hawaii national guard, shall be included in any appropriate bargaining unit or entitled to coverage under this chapter.

(d) Where any controversy arises under this section, the board shall, pursuant to chapter 91, make an investigation and, after a hearing upon due notice, make a final determination on the applicability of this section to specific positions and employees. [L 1970, c 171, pt of §2]

[§89-7] Elections. Whenever, in accordance with regulations as may be prescribed by the board pursuant to chapter 91, a petition is filed by an employee organization after January 1, 1971, showing written proof of at least thirty per cent representation of the public employees in an appropriate bargaining unit, the board shall hold an election by secret ballot to determine whether and by which employee organization the employees desire to be represented for the purpose of collective bargaining. The ballot shall contain, in addition, both the name of any candidate showing written proof of at least ten per cent representation of the public employees within the unit, and a provision for marking "no representation".

In any election in which none of the choices on the ballot receives a majority of the votes cast, a runoff election shall be conducted, the ballot providing for a selection between the two choices receiving the largest number of valid votes cast in the election. The board shall certify the results of the election, and where an employee organization receives a majority of the votes cast, the board shall certify the employee organization as the exclusive representative of all employees in the appropriate bargaining unit for the purpose of collective bargaining.

No election shall be directed by the board in any appropriate bargaining unit within which (1) a valid election has been held in the preceding twelve months; or (2) a valid collective bargaining agreement is in force and effect, except upon a petition as provided herein not more than ninety days, but not less than sixty days, prior to the expiration of the agreement.

The board shall adopt rules and regulations governing the conduct of elections to determine representation, including the time, place, manner of notification, and reporting the results of elections, and the manner for filing any petition for an election or any petition concerning the results of an election. No mail ballots shall be permitted by the board except when for reasonable cause a specific individual would otherwise be unable to cast a ballot. The board shall have the final determination on any controversy concerning the eligibility of an employee to vote. [L 1970, c 171, pt of §2]

[§89-8] Recognition and representation. (a) The employee organization which has been certified by the board as representing the majority of employees in an appropriate bargaining unit shall be the exclusive representative of all employees in the unit. As exclusive representative, it shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

(b) An individual employee may present a grievance at any time to his employer and have the grievance heard without intervention of an employee organization; provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement then in effect between the employer and the exclusive representative. [L 1970, c 171, pt of §2]

(c) Employee participation in the collective bargaining process conducted by the exclusive representative of the appropriate bargaining unit shall be permitted during regular working hours without loss of regular salary or wages. The number of participants from each bargaining unit with over 2,500 members shall be limited to one member for each five hundred members of the bargaining unit. For bargaining units with less than 2,500 members, there shall be at least five participants, one of whom shall reside in each county; provided that there need not be a participant residing in each county for the bargaining unit established by Section 89-6(a) (8). The bargaining unit shall select the participants from representative departments, divisions or sections to minimize interference with the normal operations and service of the departments, divisions or sections. [as amended by Act 212, SLH, 1971]

[§89-9] Scope of Negotiations. (a) The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process, and shall negotiate in good faith with respect to wages, hours, and other terms and conditions of employment which are subject to negotiations under this chapter and which are to be embodied in a written agreement, or any question arising thereunder, but such obligation does not compel either party to agree to a proposal or make a concession.

(b) The employer or the exclusive representative desiring to initiate negotiations shall notify the other in writing, setting forth the time and place of the meeting desired and generally the nature of the business to be discussed, and shall mail the notice by certified mail to the last known address of the other party sufficiently in advance of the meeting.

(c) Except as otherwise provided herein, all matters affecting employee relations, including those that are, or may be, the subject of a regulation promulgated by the employer or any personnel director, are subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with the exclusive representatives prior to effecting changes in any major policy affecting employee relations.

(d) Excluded from the subjects of negotiations are matters of classification and reclassification, retirement benefits and the salary ranges and the number of incremental and longevity steps now provided by law, provided that the amount of wages to be paid in each range and step and the length of service necessary for the incremental and longevity steps shall be negotiable. The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles or the principle of equal pay for

equal work pursuant to sections 76-1, 76-2, 77-31 and 77-33, or which would interfere with the rights of a public employer to (1) direct employees; (2) determine qualification, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer's operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies. [L 1970, c 171, pt of §2]

[§89-10] Written agreements; appropriations for implementation; enforcement. (a) Any collective bargaining agreement reached between the employer and the exclusive representative shall be subject to ratification by the employees concerned. The agreement shall be reduced to writing and executed by both parties. The agreement may contain a grievance procedure and an impasse procedure culminating in final and binding arbitration, and shall be valid and enforceable when entered into in accordance with provisions of this chapter.

(b) All cost items shall be subject to appropriations by the appropriate legislative bodies. The employer shall submit within ten days of the date on which the agreement is ratified by the employees concerned all cost items contained therein to the appropriate legislative bodies; except that if any cost items require appropriation by the State legislature and it is not in session at the time, the cost items shall be submitted for inclusion in the governor's next operating budget within ten days after the date on which the agreement is ratified. The State legislature or the legislative bodies of the counties acting in concert, as the case may be, may approve or reject the cost items submitted to them, as a whole. If the State legislature or the legislative body of any county rejects any of the cost items submitted to them, all cost items submitted shall be returned to the parties for further bargaining.

(c) Because effective and orderly operations of government is essential to the public, it is declared to be in the public interest that in the course of collective bargaining, the public employer and the exclusive representative shall make every reasonable effort to conclude negotiations, and include provisions for an effective date, a reopening date, and an expiration date, at a time to coincide, as nearly as possible, with the period during which the appropriate legislative bodies may act on the operating budget of the employers.

(d) All existing rules and regulations adopted by the employer, including civil service or other personnel regulations, which are not contrary to this chapter, shall remain applicable. If there is a conflict between the collective bargaining agreement and any of the rules and regulations, the terms of the agreement shall prevail; provided that the terms are not inconsistent with section 89-9(d). [L 1970, c 171, pt of §2]

[§89-11] Resolution of disputes; grievances; impasses. (a) A public employer shall have the power to enter into written agreement with the exclusive representative of an appropriate bargaining unit setting forth a grievance procedure culminating in a final and binding decision, to be invoked in the event of any dispute concerning the interpretation or application of a written agreement. In the absence of such a procedure, either party may submit the dispute to the board for a final and binding decision. A dispute over the terms of an initial or renewed agreement does not constitute a grievance.

(b) A public employer shall have the power to enter into written agreement with the exclusive representative of an appropriate bargaining unit setting forth an impasse procedure culminating in a final and binding decision, to be invoked in the event of an impasse over the terms of an initial or renewed agreement. In the absence of such a procedure, either party may request the assistance of the board by submitting to the board and to the other party to the dispute a clear, concise statement of each issue on which an impasse has been reached together with a certificate as to the good faith of the statement and the contents therein. The board, on its own motion, may determine that an impasse exists on any matter in a dispute. If the board determines on its own motion that an impasse exists, it may render assistance by notifying both parties to the dispute of its intent.

The board shall render assistance to resolve the impasse according to the following schedule:

(1) Mediation. Assist the parties in a voluntary resolution of the impasse by appointing a mediator or mediators, representative of the public, from a list of qualified persons maintained by the board, within three days after the date of the impasse, which shall be deemed to be the day on which notification is received or a determination is made that an impasse exists.

(2) Fact-finding. If the dispute continues fifteen days after the date of the impasse, the board shall appoint, within three days, a fact-finding board of not more than three members, representative of the public, from a list of qualified persons maintained by the board. The fact-finding board, shall, in addition to powers delegated to it by the public employment relations board, have the power to make recommendations for the resolution of the dispute. The fact-finding board, acting by a majority of its members, shall transmit its findings of fact and any recommendations for the resolution of the dispute to both parties within ten days after its appointment. If the dispute remains unresolved five days after the transmittal of the findings of fact and any recommendations, the board shall publish the findings of fact and any recommen-

dations for public information if the dispute is not referred to final and binding arbitration.

(3) Arbitration. If the dispute continues thirty days after the date of the impasse, the parties may mutually agree to submit the remaining differences to arbitration, which shall result in a final and binding decision. The arbitration panel shall consist of three arbitrators, one selected by each party, and the third and impartial arbitrator selected by the other two arbitrators. If either party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a neutral arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act with the same force and effect as if the panel had been selected by the parties as described above. The arbitration panel shall take whatever actions necessary, including but not limited to inquiries, investigations, hearings, issuance of subpoenas, and administering oaths, in accordance with procedures prescribed by the board to resolve the impasse. If the dispute remains unresolved within fifty days after the date of the impasse, the arbitration panel shall transmit its findings and its final and binding decision on the dispute to both parties. The parties shall enter into an agreement or take whatever action is necessary to carry out and effectuate the decision. All items requiring any monies for implementation shall be subject to appropriations by the appropriate legislative bodies, and the employer shall submit all such items agreed to in the course of negotiations within ten days to the appropriate legislative bodies.

(4) The costs for mediation and fact-finding shall be borne by the board. All other costs, including that of a neutral arbitrator, shall be borne equally by the parties involved in the dispute.

(c) If the parties have not mutually agreed to submit the dispute to final and binding arbitration, either party shall be free to take whatever lawful action it deems necessary to end the dispute; provided that no action shall involve the disruption or interruption of public services within sixty days after the fact-finding board has made public its findings of fact and any recommendations for the resolution of the dispute. The employer shall submit to the appropriate legislative bodies his recommendations for the settlement of the dispute on all cost items together with the findings of fact and any recommendations made by the fact-finding board. The exclusive representative may submit to the appropriate legislative body its recommendations for the settlement of the dispute on all cost items. [L 1970, c 171, pt of §2]

[§89-12] Strikes, rights and prohibitions. (a) Participation in a strike shall be unlawful for any employee who (1) is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the board, or (2) is included in an appropriate bargaining unit for which process for resolution of a dispute is by referral to final and binding arbitration.

(b) It shall be lawful for an employee, who is not prohibited from striking under paragraph (a) and who is in the appropriate bargaining unit involved in an impasse, to participate in a strike after (1) the requirements of section 89-11 relating to the resolution of disputes have been complied with in good faith, (2) the proceedings for the prevention of any prohibited practices have been exhausted, (3) sixty days have elapsed since the fact-finding board has made public its findings and any recommendation, (4) the exclusive representative has given a ten-day notice of intent to strike to the board and to the employer.

(c) Where the strike occurring, or is about to occur, endangers the public health or safety, the public employer concerned may petition the board to make an investigation. If the board finds that there is imminent or present danger to the health and safety of the public, the board shall set requirements that must be complied with to avoid or remove any such imminent or present danger.

(d) No employee organization shall declare or authorize a strike of employees, which is or would be in violation of this section. Where it is alleged by the employer that an employee organization has declared or authorized a strike of employees which is or would be in violation of this section, the employer may apply to the board for a declaration that the strike is or would be unlawful and the board, after affording an opportunity to the employee organization to be heard on the application, may make such a declaration.

(e) If any employee organization or any employee is found to be violating or failing to comply with the requirements of this section or if there is reasonable cause to believe that an employee organization or an employee is violating or failing to comply with such requirements, the board shall institute appropriate proceedings in the circuit in which the violation occurs to enjoin the performance of any acts or practices forbidden by this section, or to require the employee organization or employees to comply with the requirements of this section. Jurisdiction to hear and dispose of all actions under this section is conferred upon each circuit court, and each court may issue, in compliance with chapter 380, such orders and decrees, by way of injunction, mandatory injunction, or otherwise, as may be appropriate to enforce this section. [L 1970, c 171, pt of §2]

[§89-13] Prohibited practices; evidence of bad faith. (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

(2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;
(3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization.
(4) Discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because he has informed, joined, or chosen to be represented by any employee organization;
(5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;
(6) Refuse to participate in good faith in the mediation, fact-finding, and arbitration procedures set forth in section 89-11;
(7) Refuse or fail to comply with any provision of this chapter; or
(8) Violate the terms of a collective bargaining agreement.

(b) It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:
(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
(2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative, as required in section 89-9;
(3) Refuse to participate in good faith in the mediation, fact-finding and arbitration procedures set forth in section 89-11;
(4) Refuse or fail to comply with any provision of this chapter; or
(5) Violate the terms of a collective bargaining agreement. [L 1970, c 171, pt of §2]

[§89-14] Prevention of prohibited practices. Any controversy concerning prohibited practices may be submitted to the board in the same manner and with the same effect as provided in section 377-9. All references in section 377-9 "board" shall include the Hawaii public employment relations board and "labor organization" shall include employee organization. [L 1970, c 171, pt of §2]

[§89-15] Financial reports to employees. Every employee organization shall keep an adequate record of his financial transactions and shall make available annually, to the employees who are members of the organization, within sixty days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by a certified public accountant. In the event of failure of compliance with this section, any employee within the organization may petition the public employment relations board for an order compelling such compliance. An order of the board on such petition shall be enforceable in the same manner as other orders of the board under this chapter. [L 1970, c 171, pt of §2]

[§89-16] Public records and proceedings. The complaints, orders, and testimony relating to a proceeding instituted by the public employment relations board under section 377-9 shall be public records and be available for inspection or copying. All proceedings pursuant to section 377-9 shall be open to the public. [L 1970, c 171, pt of §2]

[§89-17] List of employee organizations and exclusive representatives. The public employment relations board shall maintain a list of employee organizations. To be recognized as such and to be included in the list, an organization shall file with the board a statement of its name, the name and address of its secretary or other officer to whom notices may be sent, the date of its organization, and its affiliations, if any, with other organizations. No other qualifications for inclusion shall be required, but every employee organization shall notify the board promptly of any change of name or of the name and address of its secretary or other officer to whom notices may be sent, or of its affiliations.

The board shall indicate on the list which employee organizations are exclusive representatives of appropriate bargaining units, the effective dates of their certification, and the effective date and expiration date of any agreement reached between the public employer and the exclusive representative. Copies of the list shall be made available to interested parties upon request. [L 1970, c 171, pt of §2]

[§89-18] Penalty. Any person who wilfully assaults, resists, prevents, impedes, or interferes with a mediator, member of the fact-finding board, or arbitrator, or any member of the public employment relations board or any of the agents or employees of the board in the performance of duties pursuant to this chapter shall be fined not more than $500 or imprisoned not more than one year, or both. [L 1970, c 171, pt of §2]

[§89-19] Chapter takes precedence, when. This chapter shall take precedence over all conflicting statutes concerning this subject matter and shall preempt all contrary local ordinances, executive orders, legislation, rules, or regulations adopted by the State, a county, or any department or agency thereof, including the departments of personnel services or the civil service commission. [L 1970, c 171, pt of §2]

[§89-20] Chapter inoperative, when. If any provision of this chapter jeopardizes the receipt by the State or any county of any federal grant-in-aid or other federal allotment of money, the provision shall, insofar as the fund is jeopardized, be deemed to be inoperative. [L 1970, c 171, pt of §2]

Severability provision, L 1970, c 171, pt of §2, omitted.

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Definitions and Terms

STATUTORY DEFINITIONS*

Appropriate bargaining unit—The unit designated to be appropriate for the purpose of collective bargaining pursuant to section 89-6.

Arbitration—The procedure whereby parties involved in an impasse mutually agree to submit their differences to a third party for a final and binding decision.

Board—The Hawaii public employment relations board.

Certification—Official recognition by the Hawaii public employment relations board that the employee organization is, and shall remain, the exclusive representative for all of the employees in an appropriate bargaining unit for the purpose of collective bargaining, until it is replaced by another employee organization, decertified, or dissolves.

Collective bargaining—The performance of the mutual obligations of the public employer and the exclusive representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to wages, hours, and other terms and conditions of employment, except that by any such obligation neither party shall be compelled to agree to a proposal, or be required to make a concession.

Cost items—Includes wages, hours, and other terms and conditions of employment, the implementation of which requires an appropriation by a legislative body.

Employee or public employee—Any person employed by a public employer except elected and appointed officials and such other employees as may be excluded from coverage in section 89-6(c).

Employee organization—Any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment of public employees.

Employer or public employer—The governor in the case of the State, the respective mayors in the case of the city and county of Honolulu and the counties of Hawaii, Maui, and Kauai, the board of education in the case of the department of education, and the board of regents in the case of the university of Hawaii, and any individual who represents one of these employers or acts in their interest in dealing with public employees.

Exclusive representative—The employee organization, which as a result of certification by the board, has the right to be the collective bargaining agent of all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership.

Fact-finding—Identification of the major issues in a particular impasse, review of the positions of the parties and resolution of factual differences by one or, more impartial fact-finders, and the making of recommendations for settlement of the impasse.

Impasse—Failure of a public employer and an exclusive representative to achieve agreement in the course of negotiations.

Legislative body—The legislature in the case of the State, the city council in the case of the city and county of Honolulu, and the respective county councils in the case of the counties of Hawaii, Maui, and Kauai.

Mediation—Assistance by an impartial third party to reconcile an impasse between the public employer and the exclusive representative regarding wages, hours, and other terms and conditions of employment through interpretation, suggestion, and advice to resolve the impasse.

Professional employee—Includes (A) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (B) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (A) (iv), and (ii) is performing related work under the supervision of a professional employee as defined in (A).

Service fee—An assessment of all employees in an appropriate bargaining unit to defray the cost for services rendered by the exclusive representative in negotiations and contract administration.

Strike—A public employee's refusal, in concerted action with others, to report for duty, or his wilful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment; provided, that nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to the conditions of employment.

Supervisory employee—Any individual having authority in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

*Hawaii Public Employee Collective Bargaining Law

GLOSSARY OF LABOR RELATIONS TERMS*

Agency shop—A contract requiring nonmembers of the contracting union to pay to the union a sum equal to union dues.

Agent—Person acting for an employer or a union; act of the agent implicates the principal for whom the agent acts in the matter of unfair labor practices or of conduct subject to court action whether or not specifically authorized or approved.

All-union shop—A term sometimes applied to arrangements more specifically described by the terms closed shop or union shop.

Arbitration—Method of deciding a controversy under which parties to the controversy have agreed in advance to accept the award of a third party.

Authorization card—Statement signed by employee designating a union as authorized to act as his agent in collective bargaining.

Automation—Term used by industrial engineers to describe mechanical materials handling and the new computer technology that can automate entire factories. It sometimes is used loosely to describe any technological improvement.

Back pay—Wages required to be paid to employees who have been discharged in violation of a legal right, either one based on a law or acquired by contract.

Board of inquiry—Body to be appointed by President to mediate and recommend settlement in national-emergency disputes under Taft-Hartley Act.

Bona fide union—A union chosen or organized freely by employees without unlawful influence on the part of their employer.

Business agent—Paid representative of a local union who handles its grievance actions and negotiates with employers, enrolling of new members, and other membership and general business affairs. Sometimes called a walking delegate.

Captive audience—Employees required to attend a meeting in which an employer makes an antiunion speech shortly before an election.

*Condensed from *Primer of Labor Relations*, Bureau of National Affairs, Inc.

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Now an employer need give the union an opportunity to answer such a speech under similar conditions only if he enforces a broad no-solicitation rule.

Cease and desist order—Command issued by a labor relations board requiring employer or union to abstain from unfair labor practice.

Certification—Official designation by a labor board of a labor organization entitled to bargain as exclusive representative of employees in a certain unit.

Charge—Formal allegations against employer or union under labor relations acts on the basis of which, if substantiated, a complaint may be issued by labor board.

Checkoff—Arrangement under which an employer deducts from pay of employees the amount of union dues and turns over the proceeds to the treasurer of the union.

Coercion—Economic or other pressure exerted by an employer to prevent the free exercise by employees of their right to self-organization and collective bargaining; intimidation by union or fellow employees to compel affiliation with union.

Collective bargaining—Negotiations looking toward a labor contract between an organization of employees and their employer or employers.

Collective bargaining contract—Formal agreement over wages, hours, and conditions of employment entered into between an employer or group of employers and one or more unions representing employees of the employers.

Company union—Organization of employees of a single employer usually with implication of employer domination.

Concerted activities—Activities undertaken jointly by employees for the purpose of union organization, collective bargaining, or other mutual aid or protection. Such activities are "protected" under the Taft-Hartley Act.

Conciliation—Efforts by third party toward the accommodation of opposing viewpoints in a labor dispute so as to effect a voluntary settlement.

Consent election—Election held by a labor board after informal hearing in which various parties agree on terms under which the election is to be held.

Contract-bar rules—Rules applied by the NLRB in determining when an existing contract between an employer and a union will bar a representation election sought by a rival union.

Cooling-off period—Period during which employees are forbidden to strike under laws which required a definite period of notice before a walkout.

Craft union—Labor organization admitting to membership persons engaged in a specified type of work, usually involving a special skill.

Craft unit—Bargaining unit consisting of workers following a particular craft or using a particular type of skill, such as molders, carpenters, etc.

Damage suits—Suits which may be brought in federal courts, without the usual limitations, to recover damages for breach of collective bargaining contracts and for violation of prohibitions against secondary boycotts and other unlawful strike action under the Taft-Hartley Act.

Deauthorization election—Election held by the NLRB under the Taft-Hartley Act to determine whether employees wish to deprive their union bargaining agent of authority to bind them under a union-shop contract.

Decertification—Withdrawal of bargaining agency from union upon vote by employees in unit that they no longer wish to be represented by union.

Discharge—Permanent separation of employee from payroll by employer.

Discrimination—Short form for "discrimination in regard to hire or tenure of employment as a means of encouraging or discouraging membership in a labor organization;" refusal to hire, promote, or admit to union membership because of race, creed, color, sex, or national origin.

Domination—Control exercised by an employer over a union of his employees.

Dual union—Labor organization formed to enlist members among workers already claimed by another union.

Employee election—Balloting by employees for the purpose of choosing a bargaining agent or unseating one previously recognized. See Referendum.

Employee representation plan—System under which employees select representatives to a joint body on which the management is also represented, the purpose of the body being to discuss grievances or company policy.

Employee association—Term sometimes used for plant union.

Employer association—Organization of employers in related enterprises, usually acting together in labor policy or bargaining as a unit with one or more unions.

Employer unit—Bargaining unit consisting of all production and maintenance employees working for one employer.

Escalator clause—Clause in collective bargaining contract requiring wage or salary adjustment at stated intervals in a ratio to changes in the cost of living.

Escape period—A period, normally 15 days, during which employees may resign from a union so as not to be bound to continue membership under membership-maintenance agreements.

Fact-finding boards—Agencies appointed, usually by a government official, to determine facts and make recommendations in major disputes. See Board of inquiry.

Fair employment practice—Term applied in some statutes to conduct which does not contravene prohibitions against discrimination in employment because of race, color, belief, or national origin.

Free speech—The right of employers to express views hostile to unionization, provided no threat of coercion or promise of benefit is contained therein. If the expression of views is coercive, it becomes unlawful interference with employees' rights.

Fringe benefits—Term used to encompass items such as vacations, holidays, insurance, medical benefits, pensions, and other similar benefits that are given to an employee under his employment or union contract in addition to direct wages.

Good-faith bargaining—The type of bargaining an employer and a majority union must engage in to meet their bargaining obligation under the Taft-Hartley Act. The parties are required to meet at reasonable times and to confer in good faith with respect to wages, hours, and other terms and conditions of employment. But neither party is required to agree to a proposal or to make a concession.

Grievance—An employee complaint; an allegation by an employee, union, or employer that a collective bargaining contract has been violated.

Grievance committee—Committee designated by a union to meet periodically with the management to discuss grievances that have accumulated.

Guard—Plant protection employee. May not be represented by union affiliated with union of production employees under Taft-Hartley Act.

Hiring hall—Place where workers are recruited for ships or waterfront activities or for work on construction projects.

Immunity clause—Clause in a contract designed to protect a union from suits for contract violation growing out of unauthorized strikes. A typical clause would limit recourse of the parties to the grievance procedure of the contract.

Impartial referee—Person designated by agreement between a union and an employer or association of employers whose duty it is to arbitrate grievances or controversies arising under a contract.

Independent union—Local labor organization not affiliated with a national organized union; union not affiliated with a national federation of unions.

Industrial union—Labor organization admitting to membership all persons employed in a plant or industry, regardless of kind of work performed.

Initiation fees—Fees required by unions as a condition to the privilege of becoming members. If such fees are excessive or discriminatory, under a union shop an employer may not be held to the obligation of discharging employees who do not join the union.

Injunction—Mandatory order by a court to perform or cease a specified activity usually on the ground that otherwise the complaining party will suffer irreparable injury from unlawful actions of the other party.

Interference—Short-cut expression for "interference with the right of employees to self-organization and to bargain collectively."

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International union—Nationally-organized union having locals in another country, usually Canada.

Intimidation—Actual or implied threats to induce employees to refrain from joining or to join a labor organization; threats used in other aspects of labor controversies, such as in picketing.

Judicial review—Proceedings before courts for enforcement or setting aside of orders of labor relations boards. Review is limited to conclusions of law, excluding findings of fact unless these are unsupported by evidence.

Jurisdiction—Right claimed by union to organize class of employees without competition from any other union; province within which any agency or court is authorized to act.

Jurisdictional dispute—Controversy between two unions over the right to organize a given class or group of employees or to have members employed on a specific type of work.

Jurisdictional strike—A strike called to compel an employer to assign work to one class or craft of employees rather than to another. This is an unfair labor practice under the Taft-Hartley Act and may bring the question as to proper work assignment to the Labor Board for final decision.

Labor contract—Agreement entered into between an employer and an organization of his employees covering wages, hours, and conditions of labor.

Labor dispute—As used in Norris-LaGuardia Act, a controversy involving persons in the same occupations or having interest therein or who work for the same employer or employers or who are members of the same or an affiliated union.

Labor relations board—Quasi-judicial agency set up under National or State Labor Relations Acts whose duty it is to issue and adjudicate complaints alleging unfair labor practices; to require such practices to be stopped; and to certify bargaining agents for employees in dealing with employers.

Layoff—Dropping a worker temporarily from the pay roll, usually during a period of slack work, the intention being to rehire him when he is needed.

Local—Group of organized employees holding a charter from a national or international labor organization. A local is usually confined to union members in one plant or one small locality.

Lockout—Closing down of a business as a form of economic pressure upon employees to enforce acceptance of employer's terms.

Maintenance of membership—Union-security agreement under which employees who are members of a union on specified date, or thereafter become members, are required to remain members during the term of the contract as a condition of employment.

Majority rule—Rule that the representative chosen by the majority of employees in an appropriate unit shall be the exclusive bargaining agent for all the employees.

Management-rights clause—Collective bargaining contract clause that expressly reserves to management certain rights and specifies that the exercise of those rights shall not be subject to the grievance procedure or arbitration.

Mediation—Offer of good offices to parties to a dispute as an equal friend of each; differs from conciliation in that mediator makes proposals for settlement of the dispute that have not been made by either party.

Mediation Service—Short form for United States Mediation and Conciliation Service, which has a functional part in settlement of disputes under the Taft-Hartley Act.

Membership maintenance—Requirements under which employees who are members of the contracting union or who become so must remain members during the life of the contract as a condition of employment.

Moonlighting—Practice or holding down two or more jobs at once, the second one usually being on a night shift. The Bureau of Labor Statistics estimates that 10 percent of the work force engages in this practice.

Multiple employer unit—Bargaining unit consisting of all production and maintenance workers employed by more than one employer.

Multiple plant unit—Bargaining unit consisting of all production and maintenance workers in two or more plants among a larger number owned by one employer.

Negotiating committee—Committee of a union or an employer selected to negotiate a collective bargaining contract.

Picketing—Advertising, usually by members of a union carrying signs, the existence of a labor dispute and the union's version of its merits.

Preferential shop—Arrangement with a union under which employer agrees to give certain preferences to union members in the matter of hiring or to require that a certain proportion of employees be members of the union.

Recognition—Treating with a union as bargaining agent for employees, either for all or for those only who are members of the union.

Recognition picketing—Picketing for the object of inducing or compelling the employer to recognize the union as bargaining agent for the employer's employees. Recognition picketing conducted under certain circumstances was made an unfair labor practice by the 1959 amendments to the Taft-Hartley Act.

Restraint and coercion—Term used in Section 8(b) (1) of Taft-Hartley Act making it an unfair labor practice for a union to restrain or coerce employees in the exercise of their rights to join unions or to engage in union activities or in the exercise of their rights to refrain from joining union or engaging in such activities.

Run-off election—Second employee election directed by a labor board when the first fails to show more than half the votes recorded for any one choice presented.

Self-organization—Self-determined activity by employees in the formation of labor unions.

Seniority—Length of service with an employer or in one branch of a business; preference accorded employees on the basis of length of service.

Settlement agreement—Terms agreed upon in the settlement of charges before the NLRB without a full-dress hearing, decision, and order. To be binding, such agreements must have the consent of the NLRB.

Shop steward—Person designated by a union to take up with the foreman or supervisor the grievances of fellow employees as they arise.

Showing of interest—Support union must show among employees in bargaining unit before NLRB will process union's election petition. The Board requires a union that is seeking a representation election to make a showing of interest among 30 percent of the employees in the bargaining unit.

Strike—Concerted cessation of work as a form of economic pressure by employees, usually organized, to enforce acceptance of their terms.

Strikebreaker—One whose trade it is to take employment in struck plants. Distinguished from "scab," who is a workman. May pretend to work in the plant or act as a guard. A fink.

Subcontracting—Farming out of part of a plant's work to another company. Such diversion of work for the purpose of avoiding or evading the duty to bargain with a union is an unfair labor practice under the Taft-Hartley Act.

Superseniority—Seniority granted by contract to certain classes of employees in excess of that which length of service would justify and which is protected against reduction by events which would have the effect of reducing seniority of other employees. Union stewards and veterans are sometimes accorded superseniority. The granting of superseniority to strikers' replacements has been held to be an unfair labor practice.

Supervisor—An employee with authority to hire and fire or make effective recommendations to this effect. Supervisors enjoy no protection of bargaining rights under the Taft-Hartley Act.

Unfair labor practice—Practice forbidden by the National and several State Labor Relations Acts.

Unfair labor practice strike—Strike caused or prolonged in whole or in part by the employer's unfair labor practices. In such a strike, the employer must reinstate the strikers in their jobs, upon unconditional application, even though it is necessary to let replacements go to make room for them.

Union shop—Arrangement with a union by which employer may select any employee, union or nonunion, but the new employee must join the union within a specified time and remain a member in good standing.

Unit—Shortened form of "unit appropriate for collective bargaining." It consists of all employees entitled to select a single agent to represent them in bargaining collectively.

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